IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.165 of 1999
Reserved on:01.08.2007.
Decided on: 12.9.2007.

Devinder Kumar Bansal ***…..Appellant.***

VERSUS

M/s.Teg's Masrado ***…..Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant: **Mr.Ramakant Sharma, Advocate.**

For the Respondent: **Mr.Anuj Nag, Advocate.**

Kuldip Singh, Judge

The plaintiff is in appeal against the judgment and decree dated 16.7.1999 passed by learned District Judge, Solan in Civil Suit No.34-S/1 of 1995/94. The parties are referred in the same manner as in the impugned judgment, decree.

2. The brief facts of the case are that plaintiff on 4.4.1994 in this court filed a suit for recovery of Rs.2,96,771/- against defendant on the ground that defendant utilized the services of the plaintiff as carriage contractor from 1981 to 1988. Initially, the defendant made regular payments to plaintiff but later on the payments became erratic. On 31.3.1990, a sum of Rs.1,64,703.81

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

was payable by defendant to plaintiff. Thereafter some payments were made by the defendant and on 21.4.1993 an amount of Rs.1,38,703.81 was due to plaintiff from defendant. On the amount of Rs.1,38,703.81 the plaintiff has claimed interest @ 18% from 1.6.1988 to 30.11.1993 amounting to Rs.1,58,068. Therefore, plaintiff filed a suit for recovery of Rs.2,96,771 which includes Rs.1,38,703.81 principal and Rs.1,58,068 as interest. The suit was transferred on 29.3.1995 to learned District Judge, Solan.

3. The defendant resisted the suit but did not deny engaging the service of plaintiff as carriage contractor. The defendant denied the claim of plaintiff of Rs.1,38,703.81 as on 21.4.1993. A plea of limitation has been taken. It has been submitted that defendant has paid Rs.1,19,004/- to the plaintiff keeping in view good relations with the plaintiff and nothing is payable by the defendant to plaintiff. The plaintiff filed replication and denied the stand of the defendant.

4. The learned District Judge decreed the suit on 17.12.1998 and a decree of Rs.36,349/- along with interest at the rate of 12% per annum from 4.4.1994 till payment was passed against the defendant. The plaintiff filed an application under Section 152 CPC for correction of decree dated 17.12.1998. The learned District Judge, vide order dated 16.7.1999, ordered corrections in the decree and amount of “Rs. 36,349/-“ was substituted by “Rs.35568/-“ and accordingly necessary corrections

were made in the judgement and decree, dated 17.12.1998. The plaintiff thereafter filed the above appeal.

5. I have heard the learned counsel for the parties and gone through the record.

6. The learned counsel for the plaintiff has submitted that learned District Judge in Para-20 of the judgment has wrongly taken Rs.1,38,703.81 due to plaintiff from defendant on 21.4.1993. According to learned counsel for the plaintiff, Rs.1,38,703.81 was due to plaintiff on 1.6.1988 and on this amount after adding 18% interest per annum from 1.6.1988 to 30.11.1993 interest comes to Rs.1,58,068/- and for that reason the plaintiff filed suit for recovery of Rs.2,96,771 against the defendant. The amount of Rs.1,38,703.81 was due to plaintiff from defendant on 1.6.1988 and not on 21.4.1993. The learned counsel for the defendant has supported the impugned judgment and decree.

7. The defendant has not filed appeal against the impugned judgment and decree or cross objections in the present appeal. The impugned judgment and decree have attained finality against the defendant. In Ext. PW-1/A, dated 31.5.1988, the defendant as on 31.5.1988 has admitted credit balance of Rs.1,65,203.81 in favour of plaintiff. The defendant again vide Ext.PW-1/B dated 10.4.1989 has admitted Rs.1,65,203.81 due to plaintiff as on 31.3.1989. In Ext.PW-1/C defendant has admitted on 6.4.1990 an amount of Rs.1,64,703.81 payable to plaintiff up to

31.3.1990. The amount of Rs.1,64,703.81 was again admitted by plaintiff vide Ext.PW-1/D payable on 31.3.1991. The various amounts mentioned in Ext.PW-1/A to Ext.PW-1/D are without interest. The case of the plaintiff is that defendant has paid Rs.4000/- on 26.10.1992, Rs.20,000/- on 5.11.1992 and Rs.2000/- on 21.4.1993. Hence, on 21.4.1993 an amount of Rs.1,38,703.81 (Rs.1,64,703.81 – Rs. 4000 + Rs. 20000 + Rs. 2000) was due from defendant to plaintiff and this was the principal amount. No doubt, Rs. 1,38,703.81 was apparently due on 21.4.1993 to plaintiff from defendant, but this amount is part of larger amount, which was due to plaintiff from defendant, inasmuch as, the defendant, vide Ex. PW 1/A, dated 31.5.1988, has admitted credit balance of Rs. 1,65,203.81 in favour of plaintiff on 31.5.1988. The amount mentioned in Ex. PW 1/A is without interest. The defendant has also admitted the amount due to the plaintiff from him vide Ex. PW 1/B, Ex. PW 1/C and Ex. PW 1/D. After adjustment of amounts paid by the defendant after 31.5.1988, it can be safely inferred that amount of Rs. 1,38,703.81 was due to plaintiff from defendant on 1.6.1988. The learned District Judge in Para-20 of the impugned judgment has wrongly observed that on 21.4.1993 a sum of Rs.1,38,703.81 was due to the plaintiff from the defendant.

8. The learned District Judge has allowed interest at the rate of 12% per annum on Rs.1,38,703.81 from 21.4.1993 and after adjusting an amount of Rs.1,19,004/- which the defendant has paid

passed a decree of Rs.35,568/- vide judgment and decree dated 17.12.1998 read with judgment and decree dated 16.7.1999. The plaintiff is entitled to interest at the rate of 12% per annum on Rs.1,38,703.81 w.e.f. 1.6.1988 and not from 21.4.1993 as held by learned District Judge. Rs. 1,19,004/- was paid by defendant to plaintiff on 15.4.1996, as observed by learned District Judge in para-10 of the judgement, dated 16.7.1999. The amount due to the plaintiff from defendant alongwith 12% interest per annum on Rs.1,38,703.81 w.e.f. 1.6.1988 to 4.4.1994 comes to Rs.2,35,971.41 or say Rs.2,35,971/-. On the date of filing the suit on 4.4.1994, an amount of Rs. 2,35,971/- was due to plaintiff from the defendant. The plaintiff is also entitled to future interest. In my opinion keeping in view present Bank rate of interest the plaintiff is entitled to future interest at the rate of 9% per annum on amount of Rs. 2,35,971/- w.e.f. 4.4.1994 i.e. the date of filing of the suit. The defendant during the pendency of suit has paid Rs. 1,19,004/- to the plaintiff on 15.4.1996. On 15.4.1996, on an amount of Rs.2,35,971/- the interest at the rate of 9% per annum w.e.f. 4.4.1994 comes to Rs. 43,114.78 or say Rs. 43,115/-. Thus on 15.4.1996, the plaintiff is entitled to Rs. 2,79,086/- (Rs.2,35,971/- + Rs. 43,115/-) from the defendant. On 15.4.1996, the defendant has paid Rs.1,19,004/- to the plaintiff. Thus on 15.4.1996, the amount due to the plaintiff comes down to Rs. 1,60,082/- (Rs. 2,79,086/- -

Rs.1,19,004/-). On Rs.1,60,082/- the plaintiff is entitled to interest @9% per annum from defendant w.e.f. 16.4.1996 till realization.

9. The learned District Judge has erred in returning the finding that an amount of Rs.35,568/- still remains due to the plaintiff from the defendant. As discussed above, the plaintiff is entitled to Rs.1,60,082/- from defendant on 15.4.1996 after adjusting the amount paid by the defendant to the plaintiff during the pendency of the suit. The plaintiff is also entitled to 9% per annum interest on Rs.1,60,082/- w.e.f. 16.4.1996 onwards.

10. The result of the above discussion, the appeal is allowed. The impugned judgement and decree are modified. A decree of Rs. 1,60,082/- is passed in favour of the plaintiff and against the defendant alongwith proportionate cost. The defendant is also liable to pay interest @ 9% per annum to plaintiff on Rs.1,60,082/- w.e.f. 16.4.1996, till realization.

September 12, 2007. ***(Kuldip Singh)***
(soni/hem) ***Judge.***